

IT IS ORDERED

Date Entered on Docket: April 3, 2019



The Honorable David T. Thuma
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

IN RE:

DIANE BARELA,

Debtor.

No. 18-12716-t7

**STIPULATED ORDER GRANTING BOKF, N.A. RELIEF FROM STAY AND
APPROVING THE TRUSTEE'S ABANDONMENT OF PROPERTY**

This matter came before the Court on the Motion for Relief from Stay filed on January 22, 2019, Docket No. 34 (the "Motion") by BOKF, N.A. ("BOKF" or "Movant") and on the stipulation to the terms of this Order reached between BOKF, the Debtor, and the Trustee, as evidenced by the signature of their counsel below. The Court, having reviewed the record and the Motion and the terms of this Stipulated Order, and being otherwise sufficiently informed, FINDS:

(a) On January 22, 2019, Movant served the Motion and a notice of the Motion (the "Notice") on counsel of record for the Debtor and the case trustee (the "Trustee") by use of the Court's case management and electronic filing system for the transmission of notices, as

authorized by Fed.R.Civ.P. 5(b)(3) and NM LBR 9036-1, and on the Debtor by United States first class mail, in accordance with Bankruptcy Rules 7004 and 9014.

(b) The Motion relates to the following property:

LOT 90, MI TIERRA SUBDIVISION, IN THE CITY OF LAS CRUCES, DONA ANA COUNTY, NEW MEXICO, AS SHOWN AND DESIGNATED ON THE PLAT THEREOF, FILED IN THE OFFICE OF THE COUNTY CLERK OF SAID COUNTY ON APRIL 8, 1999, IN BOOK 19 PAGE (S) 258-259 OF PLAT RECORDS. A.P.N.: 02-26908,

having a common street address of 4150 Calle Americana, Las Cruces, New Mexico 88005, and which property includes any improvements, fixtures, and attachments (the "Property"). If there is a conflict between the legal description and the street address, the legal description shall control.

(c) BOKF is a creditor of Debtor Diane Barela, being the holder of that certain Promissory Note dated August 13, 2009, in the original principal sum of \$90,333.00 made by Debtor Diane Barela (the "Note").

(d) The Note is secured by a Mortgage dated August 13, 2009, and recorded in the office of the county clerk for Dona Ana County, New Mexico, on August 17, 2009 as Instrument No. 0922929, which Mortgage is a first lien of mortgage on the Property.

(e) The Notice specified an objection deadline of 21 days from the date of service of the Notice, to which three days was added under Bankruptcy Rule 9006(f).

(f) The Notice was sufficient in form and content.

(g) The objection deadline expires on February 15, 2019. Prior to the objection deadline having expired, this case was converted to a Chapter 7 case.

(h) On March 19, 2019, counsel for BOKF served the Trustee with an amended notice of objection deadline giving the Trustee notice that he had 21 days, plus 3 days mailing, if applicable, to file an objection to the Motion for Relief.

(i) Debtor's counsel has no objection to a Stipulated Order Granting BOKF relief on the Motion, and has approved this Order as to form and content.

(j) The Trustee has no objection to a Stipulated Order Granting BOKF relief on the Motion, or to the abandonment of the Property by the Trustee as it is burdensome to the Estate and of inconsequential value, if any, to the Estate, and has approved this Order as to form and content

(k) The Motion is well taken and should be granted as provided herein; and

(l) Counsel for BOKF, by signing and submitting this Order to the Court, certifies, under penalty of perjury, that staff of Leverick and Mussleman, LLC searched the data banks of the Department of Defense Manpower Data Center ("DMDC"), and found that the DMDC does not possess any information indicating that the Debtor is currently on active military duty of the United States.

IT IS THEREFORE ORDERED:

1. BOKF, N.A., the Movant, is the holder of the Note and assignee of the Mortgage;
2. The Note and Mortgage are in default, and the Motion is well taken;
3. Pursuant to 11 U.S.C. §362(d), Movant BOKF and any and all holders of liens against the Property, of any lien priority, are hereby granted relief from the automatic stay:

(a) To enforce its rights in the Property, including foreclosure of liens and a foreclosure sale, under the terms of any prepetition notes, mortgages, security agreements, and/or other agreements to which Debtor Diane Barela is party, to the extent permitted by applicable

non-bankruptcy law, such as by commencing or proceeding with appropriate action against the Debtor or the Property, or both, in any court of competent jurisdiction; and

(b) To exercise any other right or remedy available to them under law or equity with respect to the Property.

3. The Property is deemed abandoned by the Estate.

4. The automatic stay is not modified to permit any act to collect any deficiency or other obligation as a personal liability of Debtor Diane Barela, although the said Debtor can be named as a defendant in litigation to obtain an *in rem* judgment or to repossess the Property in accordance with applicable non-bankruptcy law.

5. This Stipulated Order does not waive Movant's claim against the estate for any deficiency owed by the Debtor after any foreclosure sale or other disposition of the Property. Movant may file an amended proof of claim in this bankruptcy case within 30 days after a foreclosure sale of the Property, should it claim that Debtor owes any amount after the sale of the Property.

6. This Order shall continue in full force and effect if this case is dismissed or converted to a case under another chapter of the Bankruptcy Code.

7. This order is effective and enforceable upon entry. The 14-day stay requirement of Fed.R.Bankr.P. 4001(a)(3) is waived.

XXX END OF ORDER XXX

Submitted by:

/s/Kylee J. Berger

Kylee J. Berger
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Approved by:

Approved via email on 03/21/2019 /s/ R. Trey Arvizu, III, Debtor's Counsel

Approved via email on 03/26/2019 /s/ Clarke C. Coll, Chapter 7 Trustee